

§ 2422.25

Director makes a determination, if necessary.

§ 2422.25 When does the Region tally the ballots?

(a) *Tallying the ballots.* When the election is concluded, the Regional Director will tally the ballots.

(b) *Service of the tally.* When the tally is completed, the Regional Director will serve the tally of ballots on the parties in accordance with the election agreement or direction of election.

(c) *Valid ballots cast.* Representation will be determined by the majority of the valid ballots cast.

§ 2422.26 How are objections to the election processed?

(a) *Filing objections to the election.* Any party may file objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election. A party must file an objection and the Regional Director must receive it within five (5) days after the tally of ballots has been served. Any objections must be timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must be supported by clear and concise reasons. A party must file an original and two (2) copies of the objections.

(b) *Supporting evidence.* The objecting party must file evidence, including signed statements, documents, and other materials supporting the objections, with the Regional Director within ten (10) days after the party files the objections.

§ 2422.27 How does the Region address determinative challenged ballots and objections?

(a) *Investigation.* The Regional Director investigates objections and/or determinative challenged ballots that are sufficient in number to affect the results of the election.

(b) *Burden of proof.* An objecting party bears the burden of proof on objections by a preponderance of the evidence. However, no party bears the burden of proof on challenged ballots.

(c) *Regional Director action.* After investigation, the Regional Director

5 CFR Ch. XIV (1–1–16 Edition)

takes appropriate action consistent with § 2422.30.

(d) *Consolidated hearing on objections and/or determinative challenged ballots and an unfair labor practice hearing.* When appropriate, and under § 2422.33, a Regional Director may consolidate objections and/or determinative challenged ballots with an unfair labor practice hearing. An Administrative Law Judge conducts these consolidated hearings, except the following provisions do not apply:

(1) Sections 2423.18 and 2423.19(j) of this subchapter concerning the burden of proof and settlement conferences are not applicable;

(2) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted as provided by § 2423.26(a) of this subchapter.

(e) *Party exceptions filed with the Authority.* A party may file exceptions and related submissions with the Authority, and the Authority then issues a decision under part 2423 of this chapter.

§ 2422.28 When is a runoff election required?

(a) *When a runoff may be held.* A runoff election is required in an election involving at least three (3) choices, one of which is “no union” or “neither,” when no choice receives a majority of the valid ballots cast. However, a runoff may not be held until the Regional Director has ruled on objections to the election and determinative challenged ballots.

(b) *Eligibility.* Employees who were eligible to vote in the original election and who are also eligible on the date of the runoff election may vote in the runoff election.

(c) *Ballot.* The ballot in the runoff election will provide for a selection between the two choices receiving the highest and second highest number of votes in the election.

§ 2422.29 How does the Region address an inconclusive election?

(a) *Inconclusive elections.* An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs:

(1) The ballot provides for at least three (3) choices, one of which is “no

Federal Labor Relations Authority

§ 2422.31

union” or “neither,” and the votes are equally divided; or

(2) The ballot provides for at least three (3) choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or

(3) When a runoff ballot provides for a choice between two labor organizations and results in the votes being equally divided; or

(4) When the Regional Director determines that there have been significant procedural irregularities.

(b) *Eligibility to vote in a rerun election.* The Region uses the latest payroll period to determine eligibility to vote in a rerun election.

(c) *Ballot.* If the Regional Director determines that the election is inconclusive, the election will be rerun with all the choices that appeared on the original ballot.

(d) *Number of reruns.* There will be only one rerun of an inconclusive election. If the rerun results in another inconclusive election, the tally of ballots will show a majority of valid ballots has not been cast for any choice, and the Regional Director will issue a certification of results. If necessary, a runoff may be held when an original election is rerun.

§ 2422.30 When does a Regional Director investigate a petition, issue notices of hearings, take actions, and issue Decisions and Orders?

(a) *Regional Director investigation.* The Regional Director will investigate the petition and any other matter as the Regional Director deems necessary.

(b) *Regional Director notice of hearing.* The Regional Director will issue a notice of hearing to inquire into any matter about which a material issue of fact exists, and any time there is reasonable cause to believe a question exists regarding unit appropriateness.

(c) *Regional Director action.* After investigation or hearing, the Regional Director can direct an election, or approve an election agreement, or issue a Decision and Order.

(d) *Appeal of Regional Director Decision and Order.* A party may file with the Authority an application for review

of a Regional Director Decision and Order.

(e) *Contents of the Record.* When there has not been a hearing all material submitted to and considered by the Regional Director during the investigation becomes a part of the record. When a hearing has been held, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

§ 2422.31 When do you file an application for review of a Regional Director Decision and Order?

(a) *Filing an application for review.* A party must file an application for review with the Authority within sixty (60) days of the Regional Director’s Decision and Order. The sixty (60) day time limit under 5 U.S.C. 7105(f) may not be extended or waived. The filing party must serve a copy on the Regional Director and all other parties, and must also file a statement of service with the Authority.

(b) *Contents.* An application for review must be sufficient for the Authority to rule on the application without looking at the record. However, the Authority may, in its discretion, examine the record in evaluating the application. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific references to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Hearing Officer or Regional Director.

(c) *Review.* The Authority may grant an application for review only when the application demonstrates that review is warranted on one or more of the following grounds:

(1) The decision raises an issue for which there is an absence of precedent;

(2) Established law or policy warrants reconsideration; or,

(3) There is a genuine issue over whether the Regional Director has:

(i) Failed to apply established law;

(ii) Committed a prejudicial procedural error; or